

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MARK BREAKIRON,	:	
Petitioner	:	
	:	Civil Action No. 00-300
v.	:	
	:	Judge Hardiman
MARTIN HORN, et al.,	:	
Respondents	:	THIS IS A CAPITAL CASE

**RESPONSE TO PETITIONER'S
MOTION TO COMPEL DETAILED PROFFER OF TESTIMONY AND PRIOR
STATEMENTS AND MOTION TO CONDUCT ADDITIONAL DEPOSITIONS**

The Commonwealth's opposition to the petitioner's motions is well founded. The Commonwealth has already provided petitioner's counsel with hundreds of pages of documents in discovery, and sat through depositions of Ellis Price, Mark Morrison, Alexis Bisch, Earl Roberts, and Gary Brownfield. The Commonwealth has turned over its investigative file into Amended Claim IV, which is the subject of the upcoming hearing, even though it was under no obligation to do so. The Commonwealth has voluntarily provided the petitioner with a witness list. Now the petitioner's counsel wants a "detailed proffer" or script for each Commonwealth witness that they decided not to depose during the discovery period. In the alternative, opposing counsel wants to conduct a new round of depositions, even though the hearing is already scheduled and some of their witnesses remain in federal custody. These requests are unreasonable. The Commonwealth witnesses that the petitioner's counsel did not depose -- specifically Fayette County Judges Solomon and Warman, Gregory Kerpchar, Alphonse Lepore, and Nancy Vernon -- are witnesses well known to opposing counsel. Judge Solomon and Warman were employed by the District Attorney's Office during the time period at issue. Nancy Vernon is the current District Attorney, and appeared with Alexis Bisch

during her deposition. Alphonse Lepore was the District Attorney during the period following Solomon and Warman, and his name is mentioned in the discovery materials obtained by petitioner from the Pennsylvania State Police. Gregory Kerpchar is a former Special Agent who investigated Amended Claim IV, and his report has already been provided to petitioner's counsel. The Commonwealth has done nothing to prevent petitioner's counsel from interviewing these witnesses. Nevertheless, there is no indication in the motions that counsel or their investigators tried to interview these witnesses before resorting to the instant motions. The Commonwealth is under no legal obligation to provide the "detailed proffers" of all of its witnesses, and Local Rule 16.1.4(g) cited by the petitioner does not require the same, nor is this rule applicable because pretrial statements have not be ordered. Granting the petitioner's motions will only serve to delay this matter further, which further prolongs the pain suffered by the victim's family. As a result, these motions should be denied.

WHEREFORE, Respondents respectfully request that this Court deny petitioner's motion to compel detailed proffer of testimony and prior statements and motion to conduct additional depositions.

Respectfully submitted,

THOMAS W. CORBETT, JR.
Attorney General

BY: *[s] Christopher D. Carusone*
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Date: December 15, 2006

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FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MARK BREAKIRON,	:	
Petitioner	:	
	:	Civil Action No. 00-300
v.	:	
	:	Judge William L. Standish
MARTIN HORN, et al.,	:	
Respondents	:	THIS IS A CAPITAL CASE

CERTIFICATE OF SERVICE

AND NOW, this 15th day of December, 2006, I, Christopher D. Carusone, Senior Deputy Attorney General, counsel for respondents in the above-captioned matter, hereby certify that I this day served the foregoing **Response to Motion to Compel Detailed Proffer of Testimony and Prior Statements and Motion to Conduct Additional Depositions** by serving a copy *via* email addressed as follows:

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/s/ Christopher D. Carusone
CHRISTOPHER D. CARUSONE
Senior Deputy Attorney General